

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

SKYLER THOMAS RICE

Petitioner

Vs.

ED GONZALEZ / SHERIFF OF
HARRIS COUNTY Respondent

§

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Action #

United States Courts
Southern District of Texas
FILED

APR 15 2020

MEMORANDUM OF LAW IN SUPPORT OF
PETITIONER/PLAINTIFF'S MOTION FOR A TEMPORARY RESTRAINING
ORDER AND PRELIMINARY INJUNCTION

David J. Bradley, Clerk of Court

Statement of the Case

This is an emergency petition challenging detention because of danger posed to Petitioner Skyler T. Rice by the COVID-19 Pandemic. Petitioner pleads that the Court has subject matter jurisdiction over this case pursuant to Article I, § 9, cl 2 of the United States Constitution Suspension Clause; the Due Process Clauses of the Fifth and Fourteenth Amendments to the United States Constitution; 28 U.S.C. § 1331 (Federal question); 28 U.S.C. § 1651 (All Writs Act); and 28 U.S.C. § 2241 (Habeas corpus). Petitioner requests a TRO requiring that Respondents release him on his own recognizance for the pendency of his criminal proceedings. Petitioner is seeking emergency relief in either of two forms: a writ of habeas corpus or an injunction ordering Respondent/Defendants to immediately release Petitioner with appropriate precautionary public health measures on the grounds that his continued detention violates the Due Process Clause of the Fifth and Fourteenth Amendments.

Statement of Facts

As stated in the declarations submitted with this Motion, the Plaintiff/Petitioner is confined at the Harris County Jail on Possession of a Controlled substance Charges. The Plaintiff has underlying health conditions that pose a significant risk of loss of health and life due to the COVID-19 Pandemic. Petitioner is an asthmatic and has hypertension, both of which place Petitioner at a higher risk of death from the coronavirus (COVID-19). Social distancing and hygiene measures are Plaintiff's only defense against COVID-19. These protective measures are exceedingly difficult, if not impossible at the Harris County Jail where Petitioner shares toilets, sinks, phones, showers, eats in communal spaces, and is in close contact with the many other detainees and officers.

Social distancing of six feet would be impossible at the Harris County Jail. This concession supports the conclusion of multiple doctors and public health experts that "the only viable public health strategy available is risk mitigation... The public health recommendation is to release all people with risk factors from custody given the heightened risk to their health and safety.

ARGUMENT

POINT #1

THE PLAINTIFF IS ENTITLED TO A TEMPORARY RESTRAINING ORDER AND A PRELIMINARY INJUNCTION

In determining whether a Party is entitled to a temporary restraining order or a preliminary injunction, courts generally consider several factors: whether the party will suffer irreparable injury, the "balance of hardships" between the parties, the likelihood of success on the merits, and the public interest. Each of these factors favors the grant of this motion.

A. IRREPARABLE HARM

Petitioner is likely to experience irreparable injury absent an injunction both in the form of loss of health and life, and in the form of an invasion of his Constitutional rights

1. Loss of Health or Life from COVID-19

The on-going COVID-19 Pandemic creates a high risk that absent an injunction by this Court, Petitioner will suffer irreparable harm in the form of loss of health or life as a result of contracting the COVID-19 virus.

On March 23, 2020, the Centers for Disease Control and Prevention (CDC) acknowledged that correctional and detention facilities "present unique challenges for control of COVID-19 transmission among incarcerated/ detained persons, staff, and visitors." Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities, Centers for Disease Control (Mar. 23, 2020) <https://www.cdc.gov/coronavirus/2019-nCoV/community/correction-detention/guidance-correctional-detention.html>. Hereinafter "CDC Guidance 3/23/2020". Specifically, the CDC noted that many detention conditions create heightened risk of danger to detainees, these include: low capacity for patient volume, insufficient quarantine space, insufficient on-site medical staff, highly congregational environments, inability of most patients to leave the facility, and limited ability of incarcerated/ detained persons to exercise effective disease prevention measures (e.g., social distancing and frequent hand-washing).

Though the CDC has recommended public health guidance for detention facilities and though the Harris County Jail has indeed implemented measures designed to prevent spread of the disease, these measures

are Case 4:20-cv-01354 Document 1 Filed 04/15/20 MTSXSD Page 3 of 6
adequately and sufficiently decrease the substantial likelihood that
Petitioner will contract COVID-19. As prison officials are beginning to
recognize around the country, even the most stringent precautionary
measures - short of limiting detained population itself, - simply cannot
protect detainees from the extremely high risk of contracting this unique
and deadly disease. For example, on April 1, 2020, the Rikers Island
Jail Complex's chief physician acknowledged that "infections are
soaring" despite the facility's "following Centers for Disease Control and
Prevention guidelines and having moved mountains to protect our patients."
Miranda Bryant, Coronavirus spread at Rikers Island is a "Public Health Disaster";
Says Jail's Top Doctor, The Guardian (April 1, 2020), [https://www.theguardian.com/](https://www.theguardian.com/us-news/2020/apr/01/rikers-island-jail-coronavirus-public-health-disaster)
[us-news/2020/apr/01/rikers-island-jail-coronavirus-public-health-disaster](https://www.theguardian.com/us-news/2020/apr/01/rikers-island-jail-coronavirus-public-health-disaster).

Petitioner is 37 years of age and suffers from the following conditions,
all most all of which place him at an increased risk of dire outcome from
contracting the COVID-19 virus: Asthma, hypertension, PTSD, Depression,
nicotine and opioid addiction.

See Centers for Disease Control, Groups at Higher Risk for Severe Illness, (Apr. 2, 2020),
[https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/groups-at-higher-](https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/groups-at-higher-risk.html)
[risk.html](https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/groups-at-higher-risk.html) (noting that "people of all ages with underlying medical conditions are at
higher risk for severe illness, particularly if the underlying medical conditions
are not well controlled"). Additionally, Respondents have confined Petitioner
in an environment where he shares toilets, sink, phones, and showers, eats meals
in communal spaces, and is in close contact with the many other detainees,
officers, and visitors. Petitioner's involuntary interaction with purportedly
asymptomatic guards who rotate shifts is also a significant factor to exposure.

These are many of the conditions that the CDC has identified as being particularly
likely to increase COVID-19 transmissions in detention facilities. CDC Guidance
03/23/2020. For these reasons the Petitioner's confinement at the Harris County
Jail renders him substantially likely to contract COVID-19 and his severe
health conditions render him substantially likely to suffer irreparable harm or
death as a result.

2. Violation of Constitutional Rights

Petitioner's Fifth Amendment Claim triggers a finding that the Petitioner
will suffer irreparable harm absent an injunction. Petitioner alleges that
in subjecting him to detention conditions that amount to punishment and
that fail to ensure his safety and health Respondents are subjecting him to
a substantial risk of serious harm in violation of his rights under the
Due Process Clause. The alleged violation of a Constitutional Right is
sufficient for a Court to find irreparable harm. See *Overstreet v. Lexington-Fayette*
Urban Cty. Gov., 305 F.3d 566, 570 (6th cir 2002) (citing *Connection Distrib. Co. v. Reno*, 154
F.3d 281, 288 (6th cir 1998)). See also *Rhinehart v. Scott*, 509 Fed. Appx. 510, 514 (6th cir 2016).
(suggesting that allegations of "continuing violation of Eighth Amendment Rights" would
trigger a finding of irreparable harm). Petitioner is likely to succeed on the merits
of this Fifth Amendment Claim. *Mitchell v. Cuomo*, 748 F.2d 804, 806 (2d cir 1984) ("
When an alleged deprivation of a Constitutional Right is involved, most courts hold
that no further showing of irreparable injury is necessary").

B. Likelihood of Success on the Merits

Petitioner is likely to succeed on the merits of his claim that his
continued detention during the COVID-19 Pandemic violates his Fifth
Amendment rights.
The Due Process Clause of the Fifth Amendment to the United States Constitution
forbids the government from depriving a person of life, liberty, or property
without due process of law. US Const. amend. V. The protection applies to "all

Case 4:20-cv-01354 Document 1 Filed 04/15/20 in TXSD Page 4 of 6
'person' in the United States. As the Supreme Court has held, the Due Process Clause prohibits the government from imposing torture and cruel and unusual punishment and confinement conditions on non-convicted detainees. See *Bell v. Wolfish*, 441 US 520, 535, 95 S.Ct. 1861, 60 L.Ed. 2d 447 (1979) under the Due Process Clause a detainee may not be punished prior to an adjudication of guilt." This type of Fifth Amendment claim is analyzed under the same rubric as Eighth Amendment claims brought by prisoners." *Villegas v. Metropolitan Government of Nashville*, 709 F.3d 563, 565 (6th Cir. 2013). Eighth Amendment claims require a showing of deliberate indifference. See *Farmer v. Brennan*, 511 US 825, 835, 114 S.Ct. 1970, 128 L.Ed. 2d 811 (1994), which has both an objective and a subjective component. *Villegas v. Metro. Gov't. of Nashville*, 709 F.3d 563, 568, (6th Cir. 2013) (citing *Harrison v. Ash*, 539 F.3d 510, 518 (6th Cir. 2008)).

1. Objective Component

The objective component is satisfied by showing that, "absent reasonable precautions, an inmate is exposed to a substantial risk of serious harm." *Richko v. Wayne Cty.*, 819 F.3d 907, 915, (6th Cir. 2016) (citing *Amick v. Ohio Dep't. of Rehab. & Corr.*, 521 Fed. Appx. 354, 361 (6th Cir. 2013)). A generalized risk is a substantial risk.

As the Supreme Court explained in *Helling v. McKinney*, "We have great difficulty agreeing that prison authorities may not be deliberately indifferent to an inmate's current health problems but may ignore a condition of confinement that is sure or very likely to cause serious illness and needless suffering the next week or month or year." 509 US 25, 33, 11 S.Ct. 2475, 125 L.Ed. 2d 22 (1993). "The Eighth Amendment protects against future harm to inmates is not a novel proposition." *Id.* "It would be odd to deny an injunction to inmates who plainly proved an unsafe, life-threatening condition in their prison on the ground that nothing yet had happened to them." *Id.* The ever-growing number of COVID-19 outbreaks in prisons and detention facilities, despite a range of precautionary measures, demonstrates that the risk of a COVID-19 outbreak in Respondent's facility is significant. By the time a case is confirmed, it will almost certainly be too late to protect Petitioner's constitutional rights. Petitioner, so long as he remains detained, is therefore exposed to a substantial risk of serious harm.

2. Subjective Component

The subjective component is demonstrated by showing that "(1) the official being sued subjectively perceived facts from which to infer a substantial risk to the prisoner, (2) the official did in fact draw inference, and (3) the official then disregarded that risk." 819 F.3d at 915-16 (citing *Rooster v. Cty. of Saginaw*, 749 F.3d 437, 446 (6th Cir. 2014)) "Because government officials do not readily admit the subjective component of this test, it may be demonstrated in the usual ways, including inference from circumstantial evidence." *Richko*, 819 F.3d at 916 (citing *Dominguez v. Corr. Med. Servs.*, 555 F.3d 543, 550 (6th Cir. 2009)). Additionally "a fact-finder may conclude that a prison official knew of a substantial risk from the very fact that the risk was obvious." *Farmer*, 511 U.S. at 842. Rightfully so: the above analysis pertaining to the risk of irreparable injury reveals that the substantial risk to Petitioner is obvious. *Farmer*, 511 U.S. at 842.

In light of Petitioner's underlying health conditions, he is not ensured anything close to "reasonable safety." *Farmer*, 511 U.S. at 844. The only reasonable response by Respondent is the release of Petitioner; any other response demonstrates a disregard of the specific, severe, and life-threatening risk to Petitioner from COVID-19.

For the same reasons, Petitioner's Continued detention cannot "reasonably relate to any legitimate government purpose." *Bell v. Wolfish*, 441 U.S. 520, 536-39, 99 S.Ct. 1861, 60 L.Ed. 2d 447 (1979) (holding that pretrial detention not reasonably related to a legitimate government purpose must be considered punishment and therefore contrary to the Fifth Amendment). Petitioner faces significant risk of death due to COVID-19. Accordingly his Continued detention at the Harris County Jail is both unrelated and contrary to the government purpose of carrying out his criminal proceedings. The probability of success that must be demonstrated is inversely proportional to the amount of irreparable injury the movants will suffer absent the stay." *Northeast Ohio Coalition for Homeless and Service Employees Intern. Union, Local 1199*, 467 F.3d at 1009 (6th Cir. 2006). Given the risk and severity of irreparable harm to petitioner and the weight of public health evidence indicating release as the only reasonable option under the facts petitioner has met his burden with respects to the merits of his claim. As explained above, Petitioner has shown a likelihood of success on the merits of his action/claim that given the extraordinary nature of the COVID-19 pandemic, no set of possible conditions of confinement would be sufficient to protect his Fifth Amendment rights. Release from custody represents the only adequate remedy in this case, and it is within this Court's broad equitable power to grant it, see *Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1, 15-16, 91 S.Ct. 1267, 28 L.Ed. 2d 554 (1971) (once a right and a violation have been shown, the scope of a district court's equitable powers to remedy past wrongs is broad, for breadth and flexibility are inherent in equitable remedies.").

3. Qualified Immunity

Qualified immunity is unavailable as a defense in cases seeking injunctive relief, see *Pearson v. Callahan*, 555 U.S. 223, 242, 129 S.Ct. 808, 172 L.Ed. 2d 565 (2009) (noting that qualified immunity defense is not available in "suits against individuals where injunctive relief is sought in addition to or instead of damages"); *Harlow v. Fitzgerald*, 457 U.S. 800, 806, 102 S.Ct. 2727, 73 L.Ed. 2d 396 (1982) (describing qualified immunity as "immunity from suits for damages"). Because Petitioner here seeks only declaratory and injunctive relief, qualified immunity does not apply.

C. Balance of Equities and Public Interest

When the government opposes the issuance of a temporary restraining order the final two factors - The Balance of Equities and The Public Interest - merge, because "the government's interest is the public interest." *Pursuing America's Greatness v. Fed. Election Comm'n.*, 831 F.3d 500, 512, 425 U.S. App. D.C. 31 (D.C. Cir. 2016) (citing *Nken v. Holder*, 556 U.S. 418, 435, 129 S.Ct. 1749, 173 L.Ed. 2d 550 (2009)).

The public interest favors Petitioner's release because of the risk that Petitioner's constitutional rights will be deprived absent an injunction. "It is always in the public interest to prevent the violation of a party's constitutional rights." *GEV Lounge Inc. v. Mich. Liquor Control Comm.*, 23 F.3d 1071, 1079, (6th Cir. 1994).

Additionally, Petitioner's release will protect public health. Given the highly unusual and unique circumstances posed by the COVID-19 virus pandemic and ensuing crisis, "the continued detention of aging or ill detainees does not serve the public's interest." *Basank*, 2020 US Dist. LEXIS 53191, 2020 WL 1481503, at 6; see also *Fraihat v. U.S. Imm. and Customs Enforcement*, 517 Civ. 1546, ECF No. 81-11

(C.D. Cal. Mar. 24, 2020). ("the design and operation of detention settings promotes the spread of communicable diseases such as COVID-19"); Castillo V. Barr, CV-20-00605-TJH, 2020 US Dist. LEXIS 54425 (C.D. Cal. 2020). Protecting public health and safety is in the public interest. See *Nainast V. Bd. of Trustees*, 346 F.3d 585, 592 (6th Cir. 2003) (recognizing public health and safety as legitimate government interests).

The public interest and balance of equities demand that the Court protect Petitioner's Constitutional rights and the public health over the continued enforcement of a detention provision that, as applied to Petitioner, is unconstitutional. The remaining factors counsel granting Petitioner relief.

POINT II

THE PLAINTIFF/PETITIONER SHOULD NOT BE REQUIRED TO POST SECURITY

Usually a litigant who obtains interim injunctive relief is asked to post security. Rule 65(c), Fed. R. Civ. P. However, the Plaintiff is an indigent prisoner and is unable to post security. The court has discretion to excuse an impoverished litigant from posting security. *Elliott v. Kieseewetter*, 98 F.3d 47, 60 (3d Cir. 1996) (stating that district courts have discretion to waive the bond requirement contained in Rule 65(c) of the Federal Rules of Civil Procedure if "the balance of the equities weighs overwhelmingly in favor of the party seeking the injunction"); *Moltan Co. v. Eagle-Pitcher Industries, Inc.*, 55 F.3d 1171, 1176 (6th Cir. 1995). In view of the serious medical danger confronting the Plaintiff, the court should grant the relief requested without requiring the posting of security.

CONCLUSION

Because all factors weigh in favor of issuing emergency injunctive relief, Petitioner Prays this Court GRANT his Motion for Temporary Restraining Order - Ordering Petitioner's immediate release from Respondent's custody.

04/11/2020

Skyler J. Rice

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